

Nov 19, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM,

Plaintiff,

v.

SPOKANE COUNTY JAIL, ITS  
JUDICIAL OFFICERS, and STATE  
OF WASHINGTON,

Defendants.

No. 2:19-cv-00301-SMJ

**ORDER DENYING MOTIONS  
FOR TEMPORARY  
RESTRAINING ORDER,  
PRELIMINARY INJUNCTION,  
AND APPOINTMENT OF  
COUNSEL**

Before the Court, without oral argument, is Plaintiff Aaron Joseph Cunningham's Motion for Order to Show Cause for a Preliminary Injunction and a Temporary Restraining Order, ECF No. 9, and Motion for Appointment of Counsel, ECF No. 15. Plaintiff is a pretrial detainee at the Spokane County Jail. Defendants have not been served. Having reviewed the pleadings and the file in this matter, the Court is fully informed and denies the motions.

**INJUNCTIVE RELIEF**

Plaintiff asks the Court to order that all pretrial detainees receive access to all the same privileges as those persons who have been released on bail. ECF No. 9 at 2. He wants to be allowed to go to the store to purchase "comfort items" and to have

1 a television in his cell. He wants access to microwaves, personal clothes, shoes,  
2 jewelry, and hats. *Id.* He wants “no locked doors,” “smoking areas,” and visitation  
3 with loved ones at “all hours.” *Id.*

4 “A preliminary injunction is an extraordinary remedy never awarded as of  
5 right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff  
6 seeking a preliminary injunction must establish that he is likely to succeed on the  
7 merits, that he is likely to suffer irreparable harm in the absence of preliminary  
8 relief, that the balance of equities tips in his favor, and that an injunction is in the  
9 public interest.” *Id.* at 20. To obtain a temporary restraining order, a plaintiff  
10 generally must make the same showing required for a preliminary injunction. *See*  
11 *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 762 (9th Cir. 2018) (citing  
12 *Am. Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)).

13 A pretrial detainee’s claims regarding conditions of confinement are  
14 analyzed under the Fourteenth Amendment Due Process Clause, which guarantees  
15 such detainees the right to be free from conditions of confinement that amount to  
16 punishment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). “Pretrial detainees are  
17 entitled to ‘adequate food, clothing, shelter, sanitation, medical care, and personal  
18 safety.’” *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996)  
19 (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982)).

20 A detainee’s desire to be free from discomfort does not rise to the level of a

1 fundamental liberty interest under the Fourteenth Amendment:

2 Not every disability imposed during pretrial detention amounts  
3 to “punishment” in the constitutional sense, however. Once the  
4 Government has exercised its conceded authority to detain a person  
5 pending trial, it obviously is entitled to employ devices that are  
6 calculated to effectuate this detention. Traditionally, this has meant  
7 confinement in a facility which, no matter how modern or how  
8 antiquated, results in restricting the movement of a detainee in a manner  
9 in which he would not be restricted if he simply were free to walk the  
streets pending trial. Whether it be called a jail, a prison, or a custodial  
center, the purpose of the facility is to detain. Loss of freedom of choice  
and privacy are inherent incidents of confinement in such a facility.  
And the fact that such detention interferes with the detainee's  
understandable desire to live as comfortably as possible and with as  
little restraint as possible during confinement does not convert the  
conditions or restrictions of detention into “punishment.”

10 *Bell*, 441 U.S. at 537.

11 Jails, just like prisons, “are responsible for maintaining internal order and  
12 discipline [and] for securing their institutions against unauthorized access or  
13 escape.” *Id.* at 548 n.30 (quoting *Procunier v. Martinez*, 416 U.S. 396, 404 (1974)).  
14 “There is no basis for concluding that pretrial detainees pose any lesser security risk  
15 than convicted inmates.” *Bell*, 441 U.S. at 546 n.28. “Restraints that are reasonably  
16 related to the institution’s interest in maintaining jail security do not, without more,  
17 constitute unconstitutional punishment, even if they are discomforting.” *Id.* at 540.

18 Here, Plaintiff’s request for “comforts” for pretrial detainees clearly does not  
19 entitle him to the extraordinary relief of either a preliminary injunction or a  
20 temporary restraining order. Thus, the motion is denied.

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At this time, the record does not reflect exceptional circumstances. Plaintiff's situation is not unlike that of other incarcerated individuals, and the Court has not yet determined that he has filed a legally sufficient complaint. Thus, the motion is denied.

1. Plaintiff's Motion for Order to Show Cause for a Preliminary Injunction and a Temporary Restraining Order, **ECF No. 9**, is **DENIED**.
2. Plaintiff's Motion for Appointment of Counsel, **ECF No. 15**, is **DENIED**.

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1           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
2 provide a copy to *pro se* Plaintiff.

3           **DATED** this 19th day of November 2019.

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6                                 SALVADOR MENDOZA, JR.  
7                                 United States District Judge  
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